REPLY

OF

WADE HAMPTON,

GOVERNOR OF SOUTH CAROLINA,

AND OTHERS,

TO THE

CHAMBERLAIN MEMORIAL.

COLUMBIA, S. C.
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1877.

MEMORIAL

OF THE

GOVERNOR AND STATE OFFICERS

OF

SOUTH CAROLINA.

To the Senate and House of Representatives of the Congress of the United States of America:

The Memorial of Wade Hampton, Governor of the State of South Carolina; William D. Simpson, Lieutenant Governor and President of the Senate; of William H. Wallace, Speaker of the House of Representatives of the said State; and of James Conner, Johnson Hagood, R. M. Sims, S. L. Leaphart, H. S. Thompson, and E. W. Moise, who were elected at the general election held in said State on 7th November, 1876, to the offices respectively of Attorney General, Comptroller General, Secretary of State, State Treasurer, Superintendent of Education, and Adjutant and Inspector General of the said State, respectfully showeth to your Honorable bodies: That your memorialist, Wade Hampton, Governor of said State, being prevented from taking peaceable possession of the Executive Chamber, the Great Seal, and other things appertaining to the office of Governor, by armed troops of the United States, (under command of brevet Brigadier General Thomas H. Ruger, commanding in South Carolina,) who had taken armed possession of the State House and its approaches, and excluded therefrom the said Governor of the State, Lieutenant Governor and President of the Senate, and the House of

Representatives; the said Governor, Lieutenant Governor, House of Representatives, and thirteen of the Senators of the said State, being unable to assert their rights in the premises by peaceful means, and recognising the supremacy of the Constitution and laws of the United States, and relying upon the right and duty of Congress to guarantee to this State a Republican form of government, wherein the constituted authorities of the State should not be suppressed by the military, in December, 1876, addressed their Memorial, respectfully applying to your Honorable bodies to cause a cessation of the unwarranted interference of the military authorities and the United States troops in the affairs of the State, and for such action as would relieve them from the unwarranted conduct of the United States authorities, and would enable the Governor, Lieutenant Governor, and House of Representatives of the State peacefully to exercise the rights and perform the duties of their offices. Upon the simple narrative of facts in said Memorial set forth, the truth of which is a part of the history of the times, and which they stood ready at any moment to prove, your Memorialists would fain have rested their claim to the relief from armed oppression which they sought, had they not recently seen in the Congressional Record of January 17th a memorial of Daniel H. Chamberlain and others, falsely asserting themselves to be the Governor and State officers of South Carolina, so teeming with suppressions of truth and worse than suggestions of falsehood, that they are constrained by a sense of public duty once more to obtrude upon the attention of your Honorable bodies the unhappy condition of South Carolina, and to contradict and disprove some of the many slanders and libels by which it is sought to justify the military tyranny and usurped authority imposed upon her.

I.

General Character of the Recent Election.

Under this head the Chamberlain Memorial alleges intimidation of and violence upon Republican voters during the canvass which preceded the election; the call by Chamberlain, when

Governor, upon the President for troops for protection against domestic violence pending the election, and the inefficiency of the troops to render this protection. So much of this allegation as avers that Chamberlain, when Governor, called upon the President for troops, and that they were furnished, "so far as practicable," by the President, is true. But it is equally true, that the allegation of domestic violence, on which he based his application, was and is a slander, and was denounced as such by almost the entire intelligence of the State, including the Judges of the State, (all of whom were Republicans, with a single exception,) the business men of the two largest towns in the State, Charleston and Columbia; the clergy and northern residents of Charleston, the metropolis of this State; the public press and numbers of grand juries—the grand inquests of the Counties in which the violence was alleged to exist. It is equally true that under the Constitution the Governor of the State had no right to make such application, unless where the Legislature could not be convened; and that the statement, that the Legislature could not be convened at that time, is untrue, for it is a well known fact that the Legislature of South Carolina can be convened in four days; and it is equally true that Mr. Chamberlain did not dare to convene the Legislature, for the reason that the members, fresh from their homes in the different Counties in a time of profound quiet, knew the falsity of his statements, would not have authorized the application, and would thus have forever put a quietus on his slanders upon the people over whom he was the chief executive officer. The ire of Mr. Chamberlain's proclamation, and of his printed utterances as the nominee of the Republican party, was principally directed against certain social organizations, of some of which he was a member; to some of which he had, as Governor, furnished arms and ammunition, and had contributed money for their equipment; some of which he had presented with banners; of some of which he had been the chosen guest and spokesman on gala days and festal occasions. As soon as it was discovered that the members of these social organizations, (much civilty as they had shown to him and received at his hands,) exercising the right of freemen, preferred a friend more tried,

and of longer standing, for the highest office in the gift of the people, just so soon did he discover that these organizations were unlawful, and order their disbandment; and though there was no warrant of law for his order, and his action was in keeping with his subsequent *more* tyrannical acts, when the canvass deepened, these organizations submitted with scarce a murmur, and quietly disbanded.

Independent of the concurrent testimony of all truthful men, which conclusively shows the falsity and fallacy of what is alleged under this head, they are also demonstrated by a number of other undisputed facts, to a few of which attention is briefly called, for example:

1. The large Republican vote polled. The large colored vote polled. The large colored vote which the Democratic candidates received.

True, Mr. Chamberlain's vote, as against his competitor, compared unfavorably with Republican candidates, on his ticket, as against their competitors; but this is fully accounted for by the fact that Mr. Chamberlain ran behind his ticket while his competitor ran ahead of his.

2. The entire State government, during the canvass, was in the hands of the State Republican party, of which Mr. Chamberlain and his ticket were the chosen chiefs. All the Judges of the Supreme Court, and seven out of eight of the Circuit Judges, were Republicans. The great majority of the Sheriffs, Clerks, and Judges of Probate, were Republicans. All the County Auditors, County Treasurers, and Jury Commissioners, were not only Republicans, but appointees of Mr. Chamberlain. All the Trial Justices were appointees of Mr. Chamberlain, and, with few and rare exceptions, they were all Republicans.

3. During the canvass, alleged to be so freighted against Republican voters with intimidation and violence, no applications were made by them to the legal authorities against such intimidators; and no peace bonds required, with all the machinery of the Courts, from the pettiest justice to the Chief Justice of the Supreme Court, in Republican hands.

And since the canvass, though Courts have been held in every

County, no prosecutions for such offences have ever been instituted by the prosecuting officers, or presented by the Grand Juries. Nay, more, on the contrary, in several Counties the Grand Juries have voluntarily presented Mr. Chamberlain, in making these and similar charges in his proclamations and published utterances, as a libeller of the State and its people. Nor can it be said that this is in any degree owing to want of stringency in the punitive enactments of the South Carolina Legislature. See Revised Statutes, page 730, Chapter 132.

4. The reports of the army officers stationed here, nowhere show, so far as we are aware, that their authority was resisted, or that the military force was insufficient "to guard the voters from violence and its effects" and "to insure to all the people of the State, the right of suffrage, guaranteed to them by the Constitution and laws of the country," or that they witnessed such violence and its effects.

The fact that as a rule the Republican vote fell off and became smallest in those Counties where the largest numbers of United States soldiers were stationed during the canvass and the election, and was largest in those Counties where the smallest numbers were stationed, is of itself a most imperious negative of these allegations.

5. The arrest of citizens made for violence and intimidation in this regard, were made at the instance of the United States District Attorney D. T. Corbin, and the United States Marshal and Deputy Marshals, in certain Counties visited by them. The charge that these arrests were made for the purpose of manufacturing political capital, derives color from the fact that the warrants for arrests were based on affidavits filled in upon printed blanks previously prepared for that especial purpose, and obtained, as stated in the local newspapers without contradiction, by payments of money to each affiant, under the guise of witnesses' fees, and from the further startling fact, that during the session of the United States Circuit Court, held in Columbia since the election, notwithstanding that District Attorney Corbin and his two able assistants, Mr. Stone, who was also Attorney-General of the State, and Mr. Earle, all Republican chiefs,

were present to prosecute, and His Honor Judge Bond presided, and hundreds of Republican witnesses from the alleged intimidated Counties were present to testify, not a single bill of indictment was handed to the Grand Jury.

6. Intimidation was practised on a large scale by Republicans against colored voters who wished to vote the Democratic ticket. The prejudices and passions of their women, and the intolerance of pseudo-religious fanaticism, were brought into play for this purpose with powerful effect, notably in the Counties of Darlington, Orangeburg, Beaufort and Charleston.

7. In fine, the utter falsity of the charge is demonstrated by the entire canvass conducted by the Democratic State Candidates and the State Democratic Executive Committee, from the letter of acceptance of the nomination for Governor, to the close of the peaceful but earnest canvass. Speeches were made by the State Democratic nominees and canvassers in all the Counties in this State, in peace, propriety, good humor and good feeling, without a disturbance at a single meeting, except one single disturbance, wasting itself in words, raised in the great Republican stronghold, Beaufort, by ignorant colored Republicans, under the instigation of an appointee of Mr. Chamberlain, one Langley, who had served a term under sentence of United States Court in prison for ballot-box stuffing, before his appointment. Numbers of officers of the Navy stationed at Port Royal were witnesses of this disgraceful scene. The peaceful nature of the canvass, and the high moral and patriotic plane on which it was conducted, are evidenced by the printed reports in the newspapers of all the speeches on the hustings and elsewhere, by the Democratic candidate for Governor, and by the laudations bestowed on them by hightoned Republican journals.

II.

As to what is alleged in said Chamberlain Memorial, under the caption " II. The Canvass and Result of the Election."

It is not true that the said Board of State Canvassers, having met on November 10, " entered upon the work of canvass-

ing the returns of said election " and " continued in session from day to day until the 22d day of November," if the impression is thereby intended to be conveyed, that the said Board was actually engaged in the canvass of the returns during the said period of time; but on the contrary, it appears from the Minutes of the said Board that from the 10th to the 17th day of November, nothing whatever was done by the said Board, except to pass certain resolutions respecting the asserted powers of said Board, the manner of conducting the canvass, and the intention of the Board to take no action until their powers were defined by the Court; that on the 17th, 18th and 20th days of November, the Board was engaged exclusively in aggregating the returns under the order of the Supreme Court, and that afterwards nothing further was done by it in the canvass until it met on the 22d at 11 o'clock, , to adjourn finally at o'clock, after a session of hours. And the Memorialists aver, that as respects the manner in which said so-called canvass and determination of the Board was made, not only was the action of the Board in direct violation of the statute of the State regulating its powers and duties, and a flagrant contempt of the Supreme Court of the State, as will hereafter be made to appear, but the said so-called "determination" of the Board was made at a secret session of hours on the said 22d November, notwithstanding that said Board had resolved that eight persons from each party should be present during the whole canvass, and after the said persons had been falsely led to believe that the said Board would not take any action in the premises by a formal and public resolution of the Board, as appears from the following extract from the Minutes of the Board.

"MONDAY, November 13, 1876.

* * * * * * * * * *

"General Conner, on behalf of the Democractic candidates, submitted the following paper in regard to the jurisdiction of the Board:

"'*To the Board of State Canvassers:*

"'On behalf of the citizens of the State whom we represent, and of the Democratic candidates on the State Ticket, we submit,

that all Acts of the General Assembly, authorising the Board of State Canvassers to hear and decide all cases under protest or contest that may arise, in regard to the election of Electors for President, Vice-President, members of Congress, and all officers elected at any general election held in this State, are in violation of the 26th Section of Article I. of the Constitution, and therefore unconstitutional and void. And on behalf of the parties aforesaid, we demand that the Board of State Canvassers, now assembled, shall not hear or decide any such cases of contest or protest, but shall only act ministerially in ascertaining from the returns and statements forwarded by the Boards of County Canvassers, the persons who have received the greatest number of votes for the offices for which they were respectively candidates, and declare the same and certify it to the Secretary of State.

Nov. 13, 1876. JAMES CONNER, *Counsel.'*

WEDNESDAY, November 15, 1876.

"The Board met at 10 A. M., all the members being present. General Conner on behalf of the candidates on the Democratic ticket, submitted the following papers, and asked a decision of the Board in regard to them:

"'*To the Board of State Canvassers:*

"'We submit that the comparing the statements of the Board of County Canvassers with the returns of the Managers and the verifying the aggregations of the returns be accomplished by the Clerk and an assistant Clerk of the Board, and a Clerk and assistant Clerk on the part of those whom we represent. That the Clerk of the Board open the sealed packages in the presence of our Clerk, and that the two Clerks verify the papers and compare them with the returns of the Managers and call off the figures, and that the assistant Clerk shall, on separate papers, keep the tally and aggregate the figures.

JAMES CONNER, Counsel.'

"'*To the Board of State Canvassers:*

We request, on behalf of the parties whom we represent, that the Board will decide upon the request submitted on the 13th instant, and regard its failure to decide as a refusal of the request.

JAMES CONNER, Counsel.'

"Mr. Cardozo introduced the following resolution, which was unanimously adopted: *Resolved*, That this Board will not act upon any proposition until the question of its jurisdiction and duties be decided by the Supreme Court."

Nor can it avail the Board to say that it was compelled to this hasty action on the 22d November because it had suddenly awakened to the limitation of its powers to ten days by the statute, for (1st) the said Board had previously asked the opinion of counsel before them, upon the point whether the time during which the Board might be under the restraint of the proceedings in Court would be included in the said ten days; and being advised that it would not be so included, and the same opinion being expressed from the Bench, even if the ten days should be construed as a limitation of the power of the Board, the Board, with the consent of the parties in interest represented before it, had proceeded upon the opinion; and (2d) the said session of the Board on the 22d day of November was held after the ten days fixed by the statute had expired, this statutory time having begun on the 10th November, inclusive, and having expired upon the expiration of the 21st day of November, Sundays being omitted from the computation.

But neither the letter nor the spirit of law justify any such construction as placing a limit of ten days, excluding or including Sundays, for the entire session of the Board. The words are, "The Board shall have power to adjourn from day to day for a term not exceeding ten days." The obvious meaning is, when the words are taken in connexion with the words of the statute, to put ten days as the limit of adjournment without action while awaiting the returns from the Counties, a prohibition against unnecessary delay. The words at most would be construed as directory merely. *Ex parte*, Heath N. Y., 3 Hill (47.) That the intimation from the Bench that the time in which the action of the Court might interfere with the action of the Board would not be counted as portion of the ten days is correct, is settled law.

As to the allegation that "in conducting said canvass the said Board, under the powers conferred upon them by law, were called

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upon to decide many cases of contested elections, and particularly to decide upon protests against the validity of the entire election in the Counties of Edgefield and Laurens," your Memorialists say: *1st.* That by the laws of said State the said Board was expressly *prohibited* from hearing contests in the cases of members of the Legislature, the power to do so residing in such cases under the Constitution of the State in the respective houses of that body; *2d.* That the Supreme Court of the State had previously so adjudged, and issued its mandamus, commanding the Board to certify the election as it appeared upon the returns; and *3d.* That as a matter of fact no protests or contests were properly or legally before the said Board in reference to the elections held in Edgefield and Laurens Counties, as will more particularly appear under the next caption.

The rulings of the Courts of the State are all against the attempt of such bodies (as the Board of Canvassers) to exercise judicial functions—that is, to try any questions of fact, involving judicial hearing of evidence, outside of the election papers—or to decide any questions of law arising out of the election; their duties in the main being merely ministerial, and in determining and certifying the persons elected, extending no farther than the *verification* of the precinct and County returns and statements by the canvassers and comparison of the election papers before them. That no machinery for production of evidence *aliunde*, or for hearing of cases judicially by such Boards, is known to the election law of the State. That their claim to exercise judicial powers was denied before the Court (in proceedings to which the Board of Canvassers were parties) during their sitting in November, 1876, and the question had been argued by their counsel on their behalf, and was under consideration by the Court at the time of their disobedience of its mandate.

That assuming the constitutionality of the provisions of the Act relied on by them as giving to the Board, in connexion with their duty "to determine and declare what persons have been by the greatest number of votes duly elected," the power "to decide all cases under protest or contest that may arise, when the power to do so does not by the Constitution re-

side in some other body," there is no warrant even in the language of this provision for the assumption of the power by the Board to decide upon *ex parte* statements or evidence, or to sit in secret session, while hearing such evidence, or to decide other than "*cases under protest or contest*"—that is to say, cases made by parties who may have filed protests, or between parties who may have made contests.

That there is nothing in the language of the statute quoted to warrant the assumption of the Board of Canvassers "to decide upon protests against the validity of the entire election" in the whole State, or in any part of the State.

That above all, it was by the law no where made their duty, nor was the power conferred upon the Board to decide against the validity of the election of members of the State Legislature, the right to judge of the returns and qualifications of the members of the General Assembly being vested by the Constitution of the State expressly in the two Houses, and being expressly excluded by the terms of the Act from the cognizance of the Board of State Canvassers.

And yet, upon the assumption of this right of the Board "to decide against the validity of the entire election in the Counties of Edgefield and Laurens," rests the whole structure which the Chamberlain Memorialists have builded to sustain their usurpation of the Government of the State of South Carolina!

III.

As to what is alleged in said Chamberlain Memorial, under the caption "III. The rejection of the returns from Edgefield and Laurens Counties," your Memorialists say:

That so far as concerns the declaration by said Board of State Canvassers, that F. L. Cardozo, T. C. Dunn, H. E. Hayne, R. B. Elliott, J. R. Tolbert, and James Kennedy, had been respectively elected to the several State offices, it was not only not made upon proof of their election before said Board, but was made in face of the fact that the returns and evidence before the said Board clearly showed that no one of them had been elected, but that, on

the contrary, their competitors for the offices for which they were severally candidates, were duly elected, in their so-called determination of the election of these persons, the said Board not having rejected the votes of Edgefield and Laurens Counties, but having counted such votes as they appeared upon the returns, and counted an illegal ·precinct, unauthorised and unknown to the law, Abbeville No. 2., which purported to give a large Republican majority. And so far as concerns the declaration of the Board, that it was unable to declare any person elected in the Counties of Edgefield and Laurens, your Memorialists say: 1st. That the returns from Edgefield and Laurens Counties *were* considered by the Board in determining the election of State officers; 2d. That, as already stated, the Statute which regulated the functions of said Board expressly prohibited it from going behind the returns in cases of members of the Legislature, while the mandamus of the Court commanded the Board to make the declaration upon the returns; 3d. That as a matter of fact, the evidence upon which the said Board assumed to make said declaration, did not come before it, in the only form in which the Board was authorised to consider it, even if its powers had extended to the hearing of protests in such cases, viz., by way of evidence in support of formal protests coming through the County Canvassers, as provided by law, but consisted (if any evidence there was) of *ex parte* affidavits introduced before the said Board in secret session for the first time; and 4th. That notwithstanding that said Board had repeatedly declared that no question concerning any County would be considered without notice to both parties, the said so-called declaration was made without notice to any one, and was hurried through at the last brief meeting of said Board, so far as appears, without any consideration whatever.

The following are the Minutes of the Board as recorded for the last two days of its session, the 21st and 22d November:

"TUESDAY, November 21st, 1876.

"The Board met at 10 o'clock, all the members being present.

"A report was submitted to the Supreme Court, in obedience to the order of the 17th inst., showing the number of votes re-

ceived by each person voted for at the election on the 7th day of November, as returned by the Canvassers of Election for the several Counties.* The Board adjourned until 4 p. m.

"4 O'CLOCK P. M. The Board reassembled, all members being present.

"On motion of Mr. Stone, the following resolution was offered:

"*Resolved*, That the Board do now proceed to certify, determine, and declare the result of the election for Electors of President and Vice President of the United States. Upon a vote being taken, the resolution was rejected. Those voting nay being Messrs. Purvis, Cardozo, and Hayne. Those voting yea, being Messrs. Dunn and Stone.

"After which the Board adjourned.

"WEDNESDAY, November 22, 1876.

"The Board met at 10 a. m., all the members being present.

"The Secretary of State offered the following resolution, which was unanimously adopted:

"*Resolved*, That the votes cast for F. C. Dunn as Comptroller General, and John B. Tolbert, as Superintendent of Education, be counted for T. C. Dunn and J. R. Tolbert, respectively, for the said offices of Comptroller General and Superintendent of Education.

"The following certificate and determination of the Board was submitted and adopted:"

(Here follows certificate of election of Electors.)

"The following certificate and determination of the Board was submitted and adopted:"

(Here follows certificate of the election of State officers, Solicitors for Circuits, and County officers and members of the Legislature, the County officers and members of the Legislature from the Counties of Edgefield and Laurens being omitted.)

"On the question as to whether the statement of the County Canvassers of Laurens County should be included in the statement and determination of the Board, the vote was as follows:

*This included Edgefield and Laurens.

Those voting in the affirmative were, the Secretary of State and the Attorney General. Those voting in the negative were, the Adjutant and Inspector General, Comptroller General, and State Treasurer.

"On the same question, as to Edgefield County, the vote was as follows: Those voting in the affirmative were, the Secretary of State. Those voting in the negative were, the Adjutant and Inspector General, Comptroller General, Attorney General, and State Treasurer.

"The Secretary of State submitted the following, and asked that it be entered on the minutes:

" 'I vote yes on the question of including Edgefield and Laurens Counties in the certificate and determination of the Board. for the reason that *the testimony before the Board as to irregularities in these Counties, in the conduct of the election, is entirely ex parte.* H. E. HAYNE, Secretary of State.'

"The Attorney General submitted the following, and asked that it be entered on the minutes:

" '*To the Board of State Canvassers:*

" 'I vote in favor of declaring such persons elected from Laurens County, as members of the General Assembly and County officers for said County, as appears by the statement of the Board of County Canvassers of said County to have received the highest number of votes cast at said election held on the 7th November, 1876.

" '*I do not regard the affidavit of J. H. Rutherford, one of the Commissioners of Election of said County, explaining why he signed the statement of the Board of County Canvassers under protest, sufficient, without further evidence, to justify the Board in declining to declare any persons lawfully elected as members of the General Assembly or County officers for said County.*'

" 'I vote in favor of making no declaration of what persons were elected members of the General Assembly from Edgefield County, or what persons were elected as County officers of said County, for the reason that *it appears from papers filed with us, on behalf of candidates of the Democratic party, that one precinct in said County was established at a place not fixed by law;*

and further, that it appears from affidavits of Managers of Election at many of the precincts in said County, which affidavits are filed with the Board, that such managers were unlawfully interfered with, and prevented by threats and force from discharging their duties as required by law.

" 'In the light of these affidavits, *and because of the doubt I entertain as to whether the precinct complained of having been a lawfully established precinct,* I do not think the Board can undertake to determine what persons received the highest number of votes cast for the several offices voted for at said election.

WILLIAM STONE.'

"On motion of the Attorney General, the Board adjourned *sine die.*"

This meeting of the Board was held without notification to any of the parties in interest, and after the said parties had been led to believe, as above stated, that no action would be taken by the Board until an adjudication was had in the proceedings in the Court; hence the only evidence attainable concerning the action of the Board. is the foregoing record. From this it appears that the Board of State Canvassers, in a session of hours, not only accomplished the canvass of the votes of the entire State, for Federal, State, Circuit, and County officers, but found time to mature a judgment absolutely disfranchising two Counties of the State, depriving them of representation, and in a large measure of local government. The Board was without power under the Statutes and Constitution of the State, to entertain such questions at all, being expressly prohibited therefrom in cases of members of the Legislature, and was, moreover, at the time, under the restraint of legal proceedings at issue in the Supreme Court. We desire now to call attention to the circumstances of this action of the Board, upon their own theory of their powers. By the express provision of the election laws of said State, protests and contests are filed originally with the County Canvassers, to be by them transmitted to the State Board. This was done in large numbers of cases throughout the State. In the cases of the election in Edgefield and Laurens Counties, *no pro-*

tests or contests were transmitted by the County Canvassers, with the exception of a protest filed by Democratic candidates against the counting of one box (Macedonia) in Edgefield, at which a large Republican majority was polled; and your memorialists were therefore wholly unaware that any effort would be made to protest or contest the election in said Counties, nor could such protest be legally made. Nevertheless, the Board of State Canvassers, as it would appear from their Minutes, permitted to be brought before them certain affidavits making general allegations of intimidation in these two Counties, and upon these *ex parte* affidavits, without any notice to the parties interested, hastily declared that no persons had been elected in these Counties; that is to say, by a vote of three to two, upon the single affidavit of one of the Commissioners of Election for Laurens County, produced for the first time before them, without notice to the other side, they declared that no election was held in that County; and by a vote of four to one, they made a like declaration in the case of Edgefield County, which had been carried by a large Democratic majority, based upon *a protest by Democratic candidates, which was directed exclusively against the counting of a Republican box,* and certain affidavits "of Managers from many precincts," introduced for the first time before the said Board, without any notice or opportunity for hearing given to the other side; and this after the said Board had given a formal and public pledge to consider no protests or contests without due notice to the parties interested.

Another fact worthy of attention in the same connection, is that large numbers of protests from the various Counties, alleging fraud and intimidation of Democratic colored voters, and other matters, were regularly and properly before the said Board, especially from the Counties of Charleston and Beaufort, in which there were large Republican majorities, but the said Board paid absolutely no attention to them.

In calling attention to the conduct of the Board of State Canvassers, in rejecting the votes of the Counties of Laurens and Edgefield, apart from the question of their legal powers, it may be pertinent to add some facts showing the "method" of the Board in carrying on the canvass.

The Board consisted of five members: the Secretary of State, Attorney General, Comptroller General, State Treasurer, and Adjutant and Inspector General. All of these members were of the same political party, and three of them, *i. e.*, the Secretary of State, Comptroller General, and State Treasurer, (a majority of the Board,) were candidates on the same ticket for reëlection. The election returns, consisting of "statements" of County Canvassers, and precinct returns of Managers, were in the exclusive custody of the Secretary of State. Pending the canvass, on Saturday, November 18, Gen. John B. Gordon, a Senator of the United States, who was present to witness the canvass, applied to the Board for permission to inspect and copy these returns during the interval of the adjournment of the Board from that day until the following Monday. This request was refused; and yet, after the adjournment of the Board on that day, and for the whole of the next day, (Sunday,) the said Board and the Secretary of State permitted the several members of the Board who were candidates, with a corps of clerks, to have access to the returns and copy them for their private benefit. (See Testimony of T. J. Minton, before T. M. Wilkes, Referee of the Supreme Court, pages 36, 37.) This course, calculated in itself to throw doubt upon the fairness and impartiality of the Board, derives its full significance from a discovery made during the investigation before said Referee. This discovery was, that while the returns were thus in the possession and custody of the Secretary of State, a candidate for office, and while other candidates on the same side were alone permitted to handle them, two of said returns were fraudulently altered, so as to increase the vote of T. C. Dunn, the Comptroller General, and one of the gentlemen holding the twofold relation to the returns of Canvasser and candidate, to the extent of fifty votes. This forgery was accomplished by changing the number 10 in one return to the number 30, and by changing the number 2 in another to the number 32. (See Testimony before T. M. Wilkes, Referee, pages 26–39.) According to the returns, as they originally came into the hands of the Secretary of State or the Board of State Canvassers, Mr. Dunn's opponent for this office had a majority of several hundred votes, which it

was claimed, however, would be reduced by the correction of mere clerical errors to a bare majority of 48 votes. To overcome these 48 votes, the forgery became necessary.

The Chamberlain Memorial states that, "Upon abundant proof submitted to said Board, and in accordance with the laws of the State, the Board of State Canvassers * * * declared that, upon the evidence presented to them, the said Board was unable to declare any persons elected in Edgefield and Laurens, owing to the violence and frauds which attended the election in said Counties."

And yet, the said Board (according to the Chamberlain Memorial, p. 3, Congressional Record) were not unable to, but on the contrary did, certify to the Supreme Court, on the 21st November, 1876, as follows:

"The Board of State Canvassers, Respondents herein, hereby certify, that it appears by the statements of the several Boards of County Canvassers laid before the Board, that the following named persons have received the number of votes set opposite their respective names for the several offices designated, namely:"

(Then follows a table showing the number of votes given for each of two candidates for Senator, and for each of ten candidates for Representatives, from Edgefield, and each of two candidates for Senator, and six candidates for Representatives, from Laurens, of whom the one Senator and five Representatives from Edgefield, and one Senator and three Representatives from Laurens, received the highest number of votes, as plainly appeared.) The Chamberlain Memorialists append to this statement this "*Note:* All persons voted for, and the votes received by each, at said election for any office, except those voted for for the offices of Governor and Lieutenant Governor, are set out in said report; but as no question was made, except as to the election in the Counties of Edgefield and Laurens, the vote is omitted."

In the case of Gilbert Pillsbury *vs.* The Acting Board of Aldermen, (So. Ca. Rep., N. S., Vol. 1, p. 30,) tried in 1868, the Court decided that the Board of Aldermen, acting as Canvassers of election, under very ample powers conferred in the Statute, had no right to exercise judicial powers, and had no

right to decide against the validity of the election which had been held, and were bound to declare the result.

On this point Associate Justice Willard used this language:

"If the return had undertaken to show that no election had in fact taken place, that would have raised an issue on which their duty to declare the election depended; but the return only goes to the extent of denying the legal validity of the election—a fact altogether unimportant, so far as their duty is concerned."

The attempt of the Board of State Canvassers to decide against the validity of the election in Edgefield and Laurens, was therefore flatly in the teeth of the adjudicated and expounded law of South Carolina, as it stood at the date of their action, and before the recent judgment of this special matter by the Supreme Court in the case of Wallace *vs.* Mackey.

The assertion of the Chamberlain Memorial is therefore untrue, viz., that "The result of the canvass of the election for members of the House of Representatives showed the due election of one hundred and sixteen members only."

On the contrary, the result of the canvass of the election showed, according to the certified report of the Board of Canvassers themselves, as above stated, the due election of one hundred and twenty-four members; and this result had become matter of record in the highest Court of the State, and was known to the people of the State seven days before the meeting of the Legislature.

It is equally untrue, as stated, that when "the Board of State Canvassers declared the due election of 116 members only," and when "the Secretary of State so certified to each of the persons declared elected by the said Board," they so declared and so certified, as is claimed for them, "according to the laws" of the State.

The Supreme Court of the State has in this matter expressly decided to the contrary, and has pronounced the action of the Board as illegal and void, besides being in contempt of the Court itself.

There is no ground of law which authorizes the rejection of a precinct on the ground that good votes are mixed with bad votes

in a ballot box. Majorities may be reduced, but entire polls cannot be rejected on this ground. The present election law makes the right of the voter to depend on his oath of qualification.

The principle of Pillsbury's case already cited, is that power to declare the results of an election, does not embrace the power to declare an election void for illegality.

IV.

Proceedings in the Supreme Court.

The Chamberlain Memorialists assert that, "while the Board of State Canvassers were in the discharge of the aforesaid duties imposed upon them by law, on the 14th November, 1876, proceedings were instituted in the Supreme Court of the State, with the view to limit and control their action."

In so far as the lawful action of the Board was concerned, your Memorialists deny that the proceedings taken in the Court were instituted "with the view to limit and control their action."

It is to be presumed, in favor of the highest Court of a State, that it would deal lawfully and impartially with all parties before it, and that it would have effectually disappointed any such view, had it been entertained in this case by the Relators.

The proceedings, according to the Chamberlain Memorialists, were two petitions, "one praying for a Writ of Mandamus against the Board, and the other praying a Writ of Prohibition." From the nature of the Writ of Mandamus, it could not have been prayed for with a view "to limit" the legal action of the Board; and it could only "control" its action by requiring it to perform the duties imposed upon the Board by the law.

As to the Prohibition prayed for, it cannot, with any show of consistency on the part of the Chamberlain Memorialists, be one of their grievances against the Supreme Court, (as might be implied from the language above quoted,) because they, very soon after, in their Memorial, make a merit to their cause, that their allies, the Board of Canvassers, applied to the Court for an order, enjoining and restraining them from the exercise of judicial

functions; and the refusal of their application is made a ground of complaint against the Supreme Court in the premises. (Record, p. 3 and p. 4.)

A second grievance, of which they complain against the Supreme Court, is, (on page 3, Record,) that the Court in these proceedings, on the 17th November, issued an order, that the Board of State Canvassers "do forthwith proceed to aggregate the statements forwarded to them by the Boards of County Canvassers, and ascertain the persons who have received the highest number of votes for the offices for which they were candidates, respectively, at the general election held in the State on the 7th instant, *and certify their action in the premises, under this order, to the Court.* * *"

It will be observed, that, on the day before this order was passed, the Board of Canvassers had themselves asked of the Court an order "to permit said Board to proceed to perform the merely ministerial duties imposed by law, to wit, to aggregate the returns of the Boards of County Canvassers, and ascertain the number of votes apparently cast for the several persons voted for as candidates for office in said election." The main portion of the order of the 17th November, (the order complained of,) was almost, in terms, the same as the order applied for on the 16th by the Board itself. It is true, that the Court refused, on the application of the Board, to order the Board to do its plain duty under the law, and very properly left the Board to act on its own direct responsibility under the law. The Court would have placed itself in a false position to have done otherwise. The application, on its face, shows that it was made in contempt of the Court, and not in good faith, but with a view to entrap the Court into a false position. The Chamberlain Memorialists say, (p. 3, Record,) that "the issues between the Relators and the Board of State Canvassers being thus made up, on the 16th November the Board of State Canvassers came into Court, and *prayed the advice of the Court, as to whether it was intended by said Court,* by the rules to show cause on the suggestions for Writ of Mandamus and Prohibition, made on the 14th day of November, 1876, to restrain said Board from proceeding to

exercise the functions imposed upon said Board by law; and said Board, by their Attorneys submitted an order, *if so intended,* to permit said Board to proceed to perform," &c.

The appropriate response of a Court to such an application, would have been an immediate attachment of the Respondents and their Attorneys for a contempt of Court, and the forbearance of the Court in this case, while it shows that the Court was free from passion or prejudice, also shows, that it erred in permitting its dignity to be thus assailed. The natural fruit of its error will be seen in the subsequent contempt of its authority by the Board of Canvassers throughout the proceedings in Court; in the conduct of the Board in adjourning while the Court was actually considering the question of their duties under the law, after the issues between the Relators and the Board had been made up and argued; in the defiance of the decisions of the Court by the Chamberlain Memorialists and their allies, in usurping the Government of South Carolina, and in the daring strictures upon the action of the Court with which the Chamberlain memorial teems throughout.

While the Court very properly refused the improper application of the Board on the 16th, and left the Board to perform its plain duty under the law, it with equal propriety, when it found that the Board was not proceeding to perform its plain duties, and was attempting to act contrary to the law, issued its peremptory order as above set forth.

It will be observed that parties interested in the results of the election had informed the Court of the illegal action of the Board of Canvassers, and had asked the Court to order them to perform the duties prescribed by the law; that the Board had answered the rules, and had made evasive reply to the Court, as to their action, and had resisted the prayer of the Relators. Their whole course was well calculated to excite suspicion of an intent to violate the law and to defeat the rights of persons elected, and the will of the people.

The statute law of the State (Sec. 24, Chapter 8, Title 2 of the General Statutes) quoted in the Chamberlain Memorial, required that "the Board, when thus formed, shall, upon the

certified copies of the statements made by the Board of County Canvassers, proceed to make a statement of the whole number of votes given at such election for the various officers, and for each of them voted for, distinguishing the several Counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names."

The order of 17 November (complained of by the Chamberlain Memorialists) directed the Board of Canvassers to do just these things. And in issuing its mandate the Court took a very proper precaution to ensure the prompt compliance of the recusant Board of Canvassers, by requiring, also, that the Board should "certify their action in the premises under this order to the Court."

The Chamberlain Memorial scandalously denounces the Supreme Court for this portion of its order, requiring the Board to certify its action to the Court, and makes a merit of the resistance to it offered by the Board of Canvassers, on the ground, that the writ of mandamus "could only be used to compel the Board to go forward and make a decision, and not to compel a particular decision. And further, that the writ could not be used to bring before the Court the decision of the State Canvassers for the purpose of review."

It will be observed, that the order of 17th November no where undertook "to compel a particular decision," and no where sought "to bring before the Court the decision of the State Canvassers for the purpose of review." It simply ordered the Board to do what Section 24, above quoted, required of the Board, and it ensured obedience to its order by requiring the Respondent to report its action in course of such obedience.

The Court in this case ordered exactly what in the case of Pillsbury, above referred to, it had ordered the Board of Aldermen of the City of Charleston to do, viz., to canvass the returns and declare the election as it appeared on the face of the returns when aggregated.

The Board having ascertained the result of the election, and on the 21st November, "certified their action in the premises to the Court" the Supreme Court, on the 22d November, ordered

"that a peremptory mandamus do issue to the Board and to the Secretary of State, commanding the Board forthwith to declare duly elected to the offices of Senators and members of the House of Representatives, the persons, who, by said certificate of said Board to the Court, have received the greatest number of votes therefor, and to forthwith deliver a certified statement and declaration thereof to the Secretary of State; and commanding the Secretary of State to make the proper record thereof in his office, and without delay to transmit a copy thereof, under the seal of his office, to each person thereby declared to be duly elected, a like copy to the Governor, and cause a copy to be printed in one or more public newspapers of this State."

This order was in conformity with the provisions of the statute presenting the specific legal duties of the Board of Canvassers and of the Secretary of State, and was in accordance with the relief prayed for in the Petition.

The Board of Canvassers well knew that such was their duty under the law, and should have needed no order of Court to drive them to perform it. Had the Board been disposed, or had it at all intended in good faith to observe the law, and declare the election according to the returns, it would have done so before adjourning. Had its members intended to respect the Court it would not have adjourned without giving notice and protecting itself by the sanction of the Court in the premises. Had its members doubted as to their powers, they would have sought the decision of the Court on the question in doubt. But, it did not so intend. On the contrary, it intended, if possible, to defeat the law, to defeat the election, and to disobey and disregard the Court. The Board adjourned in order to accomplish these results, and was successful in its unlawful purpose.

It did more. Without seeking the decision of the Court as to its powers and duties, it assumed, illegally, to decide against the validity of the entire election in two Counties of the State, and throwing out the statements of the County Canvassers of these Counties from their aggregated statement of the election, the Board made a false statement and certified determination of the election to the Secretary of State; upon which false and

illegal certificate the Secretary of State issued his certificates to a number of Senators and Representatives, *less* than the number actually voted for by the people and returned by the precinct Managers and County Canvassers as elected, and less than the number required by the Constitution to compose the Senate and House of Representatives of the State of South Carolina.

V.

Edgefield and Laurens.

On page 3 (Record), the Chamberlain Memorial states that the Board of Canvassers certified to the Court "that allegations and evidence of fraud have been filed with this Board as to the election held in Edgefield County by many of the Managers of Election in said County; that similar allegations have been made and filed as to one or more precincts in Barnwell County; that the statements of the Commissioners of Election for Laurens County, laid before this Board, are signed by two Commissioners only, one of whom signed, as he certifies, under protest. Said Commissioner has also filed an affidavit that the reason he signed said statement was because he was in fear of bodily injury if he refused to do so, that various protests and notices of contests have been filed from many other Counties of the State, alleging irregularities on the part of the Election officers, illegal voting, &c.

"That in view of said allegations, protests, and notices of contests, none of which have been heard or passed upon by this Board because of the pendency of these proceedings, this Board cannot in their opinion properly ascertain and certify who have actually received the greatest number of legal votes in said Counties for the several offices voted for, unless they have the opportunity of investigating these allegations and hearing evidence upon these protests."

It will be observed, that in the above certificate it is said that none of the allegations of fraud, irregularities, and illegal voting, and none of the protests and notices of contests have been passed upon by the Board, and that the Board cannot properly ascertain

and certify who have actually received the highest number of legal votes without opportunity for investigating these allegations and hearing evidence.

This is certified to the Court, on 21st November, 1876, the day before their adjournment; and yet it is said, in the Chamberlain Memorial (Record, p. 4) "That before said writ (of mandamus) was issued and served on the Board of State Canvassers, said Board had sat out the ten days allowed by law. * * * * *and had canvassed the election returns, declared the election, and adjourned sine die.*"

It is also said in the Petition to Judge Bond (Record, p. 9), that the Board of Canvassers on the 22d November "having *fully*, legally, fairly, and honestly, according to the measure of their best skill and judgment, discharged and fulfilled their powers and duties as a Board of State Canvassers, did adjourn without day."

Again, on page 9 (Record), it is repeated, that the Board of Canvassers, the "petitioners, having as hereinbefore stated, *fully discharged all their duties* * * as a Board of State Canvassers, adjourned without day."

In neither of these last statements is any suggestion made of the omission of the Board to canvass the returns of Edgefield and Laurens Counties, and to declare the election therein, by way of exception to the assertion that they had fully done their work.

No where is any explanation given of the nature or extent of the allegations and evidence of fraud. as to the election in Edgefield County, said to have been filed "by many of the Managers of Election" in said County; nor of similar allegations "as to one or more precincts in Barnwell County;" from which explanation the Court, in the first instance, or the Congress now, or any one, can judge of the bearing of such allegations and evidences upon the election or any part thereof.

No where is any reason given why, within the ten days allowed by law and during which they sat, they had not investigated these allegations and heard evidence upon the protests and notices of contest, which the Board of Canvassers and the Chamberlain Memorialists assert was part of their duty under the law.

It is said, they were not passed upon "*because of the pendency of these proceedings*," but they themselves assert that the Court refused to restrain and enjoin the Board, and the Board and the Chamberlain Memorialists actually complain that the Court refused to issue such order.

If the allegations and evidences of fraud prevented them from declaring the election in Edgefield, why did "similar allegations" not prevent them from declaring the election in Barnwell and Counties where there were Republican majorities?

The Board did not, in their certificate to the Court, the day before they adjourned, claim that allegations and evidences of fraud, such as prevented them from declaring the election in Edgefield, had been filed as to the election in Laurens, and yet they refused to certify the election in that County as well as in Edgefield.

They allege that the statement of the Commissioners of Election in Laurens was signed by two Commissioners only, one of whom makes affidavit that he signed from bodily fear. It will be noted that this Commissioner does not say, nor do the Board of Canvassers pretend, that the certificate so signed was an untrue or fraudulent statement, nor that it was contradicted by the returns of the precinct managers in the County of Laurens. No where does it appear by whom the Commissioner was put in bodily fear, or that the acts of the unknown person at all influenced the count of the votes.

On the bald technicality of the signatures to a presumptively true statement, the election in a whole county is destroyed by a Board which boasts that it discharged its functions fully under the law.

Again, if general allegations and evidences of fraud in Edgefield, not passed upon by the Board of Canvassers, and an affidavit that one Commissioner in Laurens signed under bodily fear, which assertion was not investigated, were sufficient to set aside the election in those Counties, why were not "protests and notices of contest from many other Counties of the State, alleging irregularities on the part of election officers, illegal voting, &c.," none of which were "heard or passed upon by the Board," in

like manner sufficient to prevent the Board from certifying the election in those Counties? Was it because the Counties of Beaufort and Charleston, and other Counties where fraud and intimidation were rife, gave heavy Republican majorities?

Throughout the statement it appears that the Board of Canvassers, in the first instance, and now the Chamberlain Memorialists, following in their footsteps, assume to expound the law of the State in direct opposition to the judgment of the Supreme Court.

They assume, in the matter of the returns and qualifications of members of the State Legislature, to decide, *against the certified returns of the County Canvassers*, the rights of members to their seats; and deliberately dispose of ten members elect from two Counties of the State, against the right of the Legislature to pass upon the returns and qualifications of such members, and against the judgment of the highest Court of the State.

The Chamberlain Memorial is, in terms, an appeal to Congress to review the action of the Supreme Court of the State, and teems with strictures upon the motives and action of the Court, which they allege "proceeded wholly without jurisdiction or authority of law, and its acts were simply void," and which they charge "acted hastily, passionately, and oppressively."

Among other accusations against the Court, (on page 4 Record,) it is said that "the Court, without warrant of law, usurped the functions of the Board, and undertook, in effect, to determine and declare the election."

An examination of the orders and action of the Court will show this to be utterly unfounded.

It is also said "that in drawing to itself the record, or a portion of it, of the Board of State Canvassers and then reviewing and passing judgment on the same, the Court did precisely what it solemnly decided it could not do, in the case *Ex Parte* Carson 5, S. C. Reports (N. S.) 117."

We have already shown that the Court did not "draw to itself the record of the Board, or a portion of it, and then review and pass judgement on the same," and it will be seen by an examination of the case *Ex Parte* Carson, that the Court has not been inconsistent with itself in expounding the election law of South Carolina.

Ex Parte Carson, 5 Rich., does not decide or look toward deciding that the Supreme Court has not the right to issue a writ of *certiorari* in aid of its jurisdiction. The part of the order italicized in the Chamberlain Memorial, from which one of the Court dissented, was simply to get a paper, which could have been brought by a *subpœna duces tecum*.

The order asked for by the Board of Canvassers, was one which the Court could properly grant only by consent, and would have been passed by consent, had it not been for the contumacy of their Counsel in insisting on the word "may" instead of "shall," thus leaving it optional with the members of the Board whether they would perform their plain ministerial duty at their own will and pleasure or not. The order for the peremptory writ of mandamus, should be read in connection with the opinion and reasoning of the Court which preceded it, to wit:

"The necessity of an immediate decision, prevents for the present, any extended views of the Court on the question submitted for its determination. Neither does it propose now to declare its views of the extent or the character of the powers of the Board of State Canvassers, except so far as they relate to the election of members of the General Assembly.

"The Constitution by the 14th Section of the 2d Article, declares that 'each House shall judge of the election return and qualifications of its own members.' It was necessary, therefore, for the organization of each House, that a mode should be provided through which the choice of the electors might be made known, so far as it primarily appeared from the evidence which the Statutes required should be submitted to them.

"Without some such mode of ascertaining in the first instance the probable will of the constituency, there could be no organization of either House. It was not intended by the authority conferred on the State Board, to delegate to it any of the power vested by the Constitution in 'each House,' but merely to provide the mode and manner, which was deemed the most reliable and effective in ascertaining in each County the will of the people expressed through the ballot-box as to the offices to be filled by the election. The machinery by which the proposed

end was to be met, was through the appointment of precinct Managers, Boards of County Canvassers, and the Board of State Canvassers. The several 'statements' submitted to the last named Board, as required by the Act, provided the means, not of judging 'of the election return and qualifications of the members of either House;' but of ascertaining who, according to the mode by which the fact was to be established, were entitled to the certificates, not to show the *election* in the terms of the Constitution, but the apparent choice of the people as expressed in the 'statements;' and this conclusion was to be reached by the evidence of the number of votes cast, and of the parties in whose favor the greatest number of votes cast was given for the Senate or House, as the case might be. It was not competent for the Board to determine, as the House only could, who, in fact, was the chosen member; for the extent of their means to that end, were not commensurate with that House. One averring against the seat of another, who is admitted by possession of the certificate, does not assert his right by way of appeal from the action of the Board, but asks the intervention of the House by force of its inherent and original jurisdiction."

It should also be remembered that by admission of Counsel for the Relators and the Board, there was no difference or discrepancy between the Managers' count at the polls, their statements, the County Canvassers' statements, and the certified statements of the State Canvassers, so far as the election of members of the Legislature was concerned.

The Writ of Mandamus is as follows:

"The State of South Carolina—In the Supreme Court.

"The State of South Carolina, *ex Relatione* R. M. Sims, Johnson Hagood, S. L. Leaphart, Jas. Conner, H. S. Thompson, and E. W. Moise,

versus

"H. E. Hayne, Secretary of State, Chairman; and F. L. Cardozo, State Treasurer; T. C. Dunn, Comptroller General; William Stone, Attorney General; H. W. Purvis, Adjutant

and Inspector General, Members of the Board of State Canvassers, and H. E. Hayne, Secretary of State.

"THE STATE OF SOUTH CAROLINA.

"To H. E. Hayne, Secretary of State, Chairman; and F. L. Cardozo, State Treasurer; T. C. Dunn, Comptroller General; William Stone, Attorney General; H. W. Purvis, Adjutant and Inspector General, Members of the Board of State Canvassers, and H. E. Hayne, as Secretary of State.

"Whereas, R. M. Sims, Johnson Hagood, S. L. Leaphart, Jas. Conner, H. S. Thompson, and E. W. Moise, Relators, did, on the 14th day of November, A. D. 1876, file their petition and suggestion in the Supreme Court of this State against you for a Writ of Mandamus; and whereas, the said Court did thereupon, on the same day, issue a rule against you to shew cause why the said writ should not issue, to which said rule you duly responded.

"And whereas, the said Court did, on the 22d day of November, A. D. 1876, after consideration of the matters in issue, order and adjudge that a writ of peremptory mandamus do issue, directed to you, commanding the said Board of State Canvassers forthwith to declare duly elected to the offices of Senators and members of the House of Representatives the persons who, by the certificate of the said Board to the said Court, had received the greatest number of votes therefor, and to forthwith deliver a certified statement and declaration thereof to the Secretary of State, and commanding the Secretary of State to make the proper record thereof in his office, and without delay transmit a copy thereof, under the seal of his office, to each person thereby declared to be elected, and a like copy to the Governor, and cause a copy thereof to be printed in one or more public newspapers of this State.

"Now, therefore, we do command you, the said Respondents, immediately after the receipt of this writ, that you, H. E. Hayne, Secretary of State, Chairman; F. L. Cardozo, State Treasurer; T. C. Dunn, Comptroller General; William Stone, Attorney General; and H. W. Purvis, Adjutant and Inspector General,

forthwith do declare duly elected to the offices of Senators and members of the House of Representatives of the General Assembly of the State of South Carolina, the persons who, by the certificate of the said Board of State Canvassers to the said Supreme Court of the said State, have received the greatest number of votes therefor, and do forthwith deliver a certified statement and declaration thereof to H. E. Hayne, Secretary of State:

"And that you, H. E. Hayne, Secretary of State, do immediately, upon the receipt of said certified statement and declaration, make the proper record thereof in the office of Secretary of State, and do without delay transmit a copy thereof, under the seal of the Secretary of State, to each person thereby declared to be elected, and a like copy to the Governor of the said State, and do cause a copy thereof to be printed in one or more public newspapers of the said State.

"And how you the said Respondents shall have executed this our writ, make known to the said Supreme Court forthwith.

"Witness, Albert M. Boozer. Clerk of the Supreme Court of the State of South Carolina, at Columbia, this twenty-second day of November, A. D. 1876.

ALBERT M. BOOZER,
Clerk of Supreme Court of S. C."

The return is commanded "forthwith," in accordance with familiar law, when no time is specially directed in the order for the issuance of the writ, and in legal parlance means twenty-four hours, of which the Board and their Counsel were fully advised by the Court. That in this order and writ, the Court did not exceed its powers, is well settled law. (See Fuller *vs.* Hilliard.)

The Board and their Counsel were apprised of the order for the writ before their adjournment. One of their number and their Counsel were in Court when the order was announced, and they were parties to the proceeding. Where, it may he asked, even if the Court had made no order, does the Board of Canvassers derive power to reject a poll? Where to reject the votes of two Counties, and disfranchise their voters? They did not do so in the matter of State officers, though their action there was

fraudulent and in excess of their power in other regards. Legislative bodies may reject polls, may create vacancies. They have power to fill vacancies by writs of election, and are not limited to the test of candidates receiving the highest number of votes, but can inquire and decide whether an election gives fair representation, and can supply any defects, intrinsic or extrinsic; but when were ever such powers claimed in a Court for a Board of Canvassers, possessed of only ministerial jurisdiction, without an instant and decided negative? It had been decided in this State long ago, that the Board of State Canvassers who had adjourned could be reconvened. (See State *vs.* Canvassers, 4 S. C.) Their sittings in this instance were adjourned, not by operation of law, as is falsely claimed, but by their own clandestine and fraudulent action to defeat the will of the people, and the supervisory control over them, vested by the Constitution in the Supreme Court.

It is the settled practice in mandamus, here and elsewhere, where a ministerial duty is to be performed, for the Court to define the exact nature of the act to be performed, and embody it in its peremptory mandamus; as, for example, where the Comptroller General is to deliver a warrant, or the Treasurer a check for money, the writ describes the nature of the warrant or check, and orders accordingly. It is only where there is a discretionary or judicial act to be performed, that the peremptory mandamus is limited to merely ordering the officer to proceed and exercise the jurisdiction, without defining the precise act to be performed. To direct a Court is said to be a political act. *Non constat.* It may effect a political result, but it is a legal act, a judicial act, not a political act; for a political act involves the exercise of political discretion. Under the Constitution and laws of South Carolina, the determination of the question as to who has received the highest number of votes at an election, has never been a political act. As distinguished from a political act, it has always been a judicial act, and the jurisdiction has been exercised immemorially. Whether it be exercised by quo warranto, finally, or by mandamus, as to *prima facie* right, cannot affect the character of the act or the nature of the jurisdiction. If mandamus

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infringes upon the inhibition against political acts, so also, and in greater degree, does quo warranto.

VI.

Proceedings for Contempt.

What the Relators informed the Court, on November 24, can be most satisfactorily shown by the Information itself, which is as follows :

INFORMATION.

"And now come into Court the Relators aforesaid, and give the Court to understand and be informed, that on the pleadings filed in this Court by the Relators against the Respondents, the questions submitted to the Court for its adjudication were the duties and powers of the Board of State Canvassers, under the law and the rights of the Relators and the citizens of the State thereunder. That your Relators asked for a rule to shew cause, and inserted in said rule an *ad interim* order that no further proceedings should be had by the said Board of State Canvassers until the decision of the Court upon the matters submitted to it. That your Honors refused to grant such *ad interim* order, and directed that it should be stricken out of the rule, stating in substance that the Board could not and would not do anything after rule had been served upon them from this Court. If they do, it will be a high contempt of Court.

"That the Board of State Canvassers, by their resolution, filed as an exhibit in this cause, resolved 'That this Board will not act upon any proposition until the question of its powers and duties be decided by the Supreme Court.'

"That on the 22d day of November instant, the Board of State Canvassers filed in Court a certified statement of the persons who had received, at the general election held on the 7th of November instant, the greatest number of votes for the offices for which they were respectively candidates, according to the statements of the Boards of County Canvassers.

"That the Board of State Canvassers in the same report informed the Court that there were clerical errors in regard to T. C. Dunn and J. R. Tolbert, candidates on the one side for Comp-

troller General and Superintendent of Education, respectively; and that there were contests and protests from the Counties of Edgefield, Barnwell, and Laurens, on account of irregularities, frauds, and intimidation in said Counties. But in said report the Board of State Canvassers did not claim any authority to correct these clerical errors or to adjudicate the protests and contests, their authority and duty in these respects being then under the consideration of the Court.

"That on the 22d day of November instant, this Court, by its order, commanded 'the Board of State Canvassers forthwith to declare duly elected to the offices of Senators and Members of the House of Representatives the persons who, by said certificate of the said Board to the Court, have received the greatest number of votes therefor, and to forthwith deliver a certified statement and declaration thereof to the Secretary of State, and commanding the Secretary of State to make the proper record thereof in his office, and without delay transmit a copy thereof, under the seal of his office, to each person thereby declared to be elected, and a like copy to the Governor, and to cause a copy thereof to be printed in one or more newspapers of the State.'

"That immediately thereafter, and without adjournment, the Court took up the matter of Electors for President and Vice President, wherein these Relators alleged that there were many errors and irregularities in the statements of the County Canvassers, and many discrepancies between the County Canvassers' statements and the Managers' returns of the precincts, and prayed that the Board of State Canvassers should compare the statements of the County Canvassers with the Managers' returns, so that the true result of the election should be reached, and that the Board should perform their duties according to law, and submit to this Court their report, with all official papers on which the same is in any manner based.

"And this Court thereupon issued its rule, directed to said Board of State Canvassers, to shew cause why the prayer of the Relators should not be granted. That the said Board of State Canvassers, by their Counsel, asked for time to answer said rule, alleging, among other things, that the duties imposed upon the

Respondents by the previous order of the Court, in regard to Members of the General Assembly, would occupy time and prevent due attention to the rule: and time was accordingly granted.

"That while these proceedings were being had in Court, and the Respondents were asking the indulgence of the Court, the Respondents met without the knowledge of these Relators, or of any of the parties interested, altered the alleged clerical errors in favor of T. C. Dunn and J. R. Tolbert, candidates of their own party, and thereby reversed the certified aggregation of votes which they had submitted to the Court, and further refused to certify as elected the persons who, in Edgefield and Laurens Counties, had received the greatest number of votes for Members of the General Assembly, as appears by the certified report of the said Board submitted to this Court, and thereby decided the protests from those Counties in favor of their own party and against these Relators and the Democratic members from those Counties, one member of said Board voting against said action of the Board in this regard, because the testimony was entirely *ex parte*. And the said Board of State Canvassers further declared elected all the Republican candidates for Electors, and declared F. L. Cardozo elected as Treasurer, T. C. Dunn elected as Comptroller General, H. E. Hayne elected as Secretary of State, R. B. Elliott elected as Attorney General, John R. Tolbert elected as Superintendent of Education, and James Kennedy elected as Adjutant and Inspector General—it not appearing by the minutes of said Board that either of the said F. L. Cardozo, T. C. Dunn, or H. E. Hayne withdrew from said Board when their election was acted upon and declared—and then adjourned *sine die* between the hours of 12 m. and 1 p. m. of the twenty-second; all of which will appear by the certified copy of the minutes of the said Board of State Canvassers hereto annexed.

"And these Relators show to this Court that the mandate and order of this Court have been disobeyed by the said Board of State Canvassers. That while in Court a party to the proceedings to decide the powers and duties, and submitting itself to the jurisdiction of the Court, the said Board of State Canvassers has not waited for the judgment of the Court determining its legal

duties and powers, and the proper execution of them; but has assumed to construe the law and decide those questions for itself and act on its own decision, and to place itself, by adjournment, beyond the reach and control of the Court.

"And these Relators submit this information to the Court that such order may be made thereon as to the Court may seem meet and proper. (Signed) JAMES CONNER,

Counsel."

The statement that upon the reading of the affidavit, (page 4, in the Congressional Record,) the Court *at once* proceeded to adjudge the members of the Board guilty of contempt, and that in reference to the proceeding for contempt the Court acted "hastily, passionately, and oppressively," is simply false. Upon the reading of the affidavit, the Court asked that there should be disclosed, verbally and in substance, what the return would be; and in so doing, acted in accordance with established practice. The application for time being addressed to the discretion of the Court, the inquiry was normally and kindly made as to what matters they proposed to embrace in their return, and bearing on the necessity for further time. Counsel declined to make any statement, and would not even say that the members of the Board would at any time make return to the writ of peremptory mandamus; *and they have never done so, and are still in flagrant contempt of the highest Court of the State.* The Court, so far from acting hastily, passionately, and oppressively, took unusual pains to inform the Counsel of the members of the Board of what they should do, and gave the parties the benefit of the night for reflection, in the vain hope that they would not persist in their contumacy and contempt, and would thus relieve the Court from the unpleasant alternative of either punishing them for contempt, or forfeiting entirely its own dignity; and it was only after adjuring them to take the proper and respectful course, and giving them time for cool reflection and proper action, and on the following day, asking if any motion was to be made on their behalf, and no response being made, that the Court reluctantly adjudged them guilty of contempt, in the following judgment and order;

"State of South Carolina,
In the Supreme Court.

The State of South Carolina, *Ex Relatione* R. M. Sims, Johnson Hagood, S. L. Leaphart, James Conner, H. S. Thompson, and E. W. Moise,

versus

H. E. Hayne, Secretary of State, Chairman, and F. L. Cardozo, State Treasurer, T. C. Dunn, Comptroller General, William Stone, Attorney General, and H. W. Purvis, Adjutant and Inspector General, Members of the Board of State Canvassers, and H. E. Hayne, as Secretary of State.

In Re Rule, *vs.*
of Board of State Canvassers, for Contempt.

" The Relators in the above cause having filed their Suggestion in this Court, on the 14th day of November, 1876, praying, among other things, that the said Respondents might be commanded by this Court to perform their duties as State Canvassers according to law, and the said Respondents having answered thereto, and the duties and powers of the Board of State Canvassers having been submitted to this Court and argument heard thereon, and the said Respondents having adopted their resolution, 'That this Board will not act upon any proposition until the question of its powers and duties be decided by the Supreme Court;' which said resolution was duly filed as an exhibit in this cause. And the said Board of State Canvassers having, in obedience to an order of this Court, made their certified report to this Court, setting forth the persons who had received the highest number of votes for the offices for which they were respectively candidates, at the general election held in this State on the 7th instant. And this Court having, on the 22d day of November, 1876, made its order that a Writ of Mandamus do issue, directed to the said Respondents, commanding the said Board of State Canvassers forthwith to declare duly elected to the offices of Senator and members of the House of Representatives the persons who, by the certificate of the said Board of State Canvassers to the said Court, had received the greatest number of votes therefor, and

forthwith to deliver a certified statement and declaration thereof to the Secretary of State, and commanding the Secretary of State to make the proper record thereof in his office, and without delay transmit a copy thereof, under the seal of his office, to each person thereby declared to be elected, and a like copy to the Governor, and cause a copy thereof to be printed in one or more public newspapers of this State.

"And the said Board of State Canvassers having, on the said 22d of November, and while this Court was in session, met and made their other certified statement of the persons who had received the greatest number of votes for members of the Senate and members of the House of Representatives from the several Counties, and declared the same duly elected, and delivered said certified statement and declaration to the Secretary of State; but the said Board of State Canvassers refused to certify and declare as elected the persons who had received the greatest number of votes for members of the Senate and members of the House from the Counties of Edgefield and Laurens, and adjourned *sine die*.

"And this Court, in pursuance of its order dated the 22d day of November, having issued its Writ of Mandamus, directed to the said Respondents, commanding them to do and perform the matters and things hereinbefore set forth in their said order, and to make known to said Court forthwith how they, the said Respondents, shall have executed said Writ.

"And said Writ having been duly served upon the said Respondents, and the said Respondents having failed to obey the mandate of this Court expressed in said Writ, and having failed to make any return to said Writ, showing their performance and execution of the mandate of the Court, or good and sufficient cause why the same had not been done. And thereupon a Rule having issued from this Court on the 24th day of November, directing the said Respondents to show cause why they should not be attached for contempt in not obeying said mandate of the Court; and said Rule having been served on the said Respondents, and the said Respondents having appeared in Court in answer to said Rule, and having failed to make any return thereto, or to show any

good and sufficient reason why they had not obeyed and executed the mandate of this Court:

"*It is now Adjudged*, That the said H. E. Hayne is in contempt of this Court, and *It is Ordered*, That he do pay a fine of fifteen hundred dollars, and that the Sheriff of Richland County do take him, the said H. E. Hayne, into custody, and confine him in the common Jail of said County, until he be discharged by the order of this Court.*

[SEAL] (Signed) F. J. MOSES."

"Nov. 25, 1876."

Not one cent of the fine has ever been paid, and in a very short time they were relieved by Judge Bond from imprisonment. The Chamberlain Memorial would seem to seek to excuse the contempt of the culprits by reason of their high official status; but such a plea is not in accordance with the genius of law, justice, or republican institutions. There was presented the very unusual spectacle of parties in high official position resisting in concert, deliberately and designedly, the process of the Court and the mandate of the law. Their conduct was well calculated to call forth hasty and passionate expressions from those upon whose decisions the security of society depends, but no such expression was elicited; and yet calumny and slander are heaped upon them as for partisan purposes they had been hitherto heaped upon the people of the State.

It is a common learning that the constitutional provision cited is inapplicable. See Watson *vs.* Citizens' Savings Bank, 5 Rich.

VII.

Organization of the House of Representatives.

The Report of the Special Committee of the body known as the Mackey House of Representatives of South Carolina, "relating to the organization of that body, and the constitutional validity thereof," has been adopted by that House, and ordered

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*A similar Judgment was rendered in the case of each one of the Respondents.

to be laid before the President and the members of both Houses of the Congress of the United States. It is an ingenious and able paper, presenting a plausible argument in support of the action of Mr. Chamberlain and his associates, in their unlawful assumption of authority in this State. There is no need to examine its propositions in detail. A brief examination of the first of these, upon which the others rest, will demonstrate the fallacy of the reasoning of the Committee, and prove conclusively, by the highest authority, that "the body presided over by Mackey has no legal status whatever." Summed up in a few words the argument of the report is as follows:

The Board of State Canvassers had full authority to refuse certificates to the members elect from Laurens and Edgefield. Their action could not be reversed by the Supreme Court. That thus there were only 116 members elect to the House of Representatives; that the Clerk of the late House, having full authority in law to make up the roll of members, was justified in putting this number on his roll, and in excluding all others; that the Mackey House, having been organized with fifty-nine members, the majority of one hundred and sixteen, was duly constituted, and that consequently all its action is in strict accordance with the Constitution.

It will be observed that the keystone of this argument is, the legality of the action of the State Board of Canvassers. If this position be not maintained, the whole fabric falls to the ground, and the organization of the House under Mackey, and all of the subsequent action of the Chamberlain Government, must perforce be illegal. The legality of the action of the Board of State Canvassers depends upon three propositions:

1. Either that this Board heard the protest and contest with regard to the elections in Laurens and Edgefield, and decided that they were fraudulent;

2. Or that, without hearing the protest and contest, they had facts before them which induced the belief that the elections were invalid, and that they, in consequence thereof, refused to issue certificates of election;

3. And that in this they were acting with authority of law.

I. No protest or contest was in fact heard. The idea of a protest, or contest, involves judicial action upon a case made, in which there are parties complaining and parties defending; the result of which depends upon facts established by legal testimony, governed by law produced and relied upon. It is a trial before a legal tribunal. In the present case the *prima facie* count of the ballots cast in these two Counties showed that certain Democrats had the highest number of votes. No notice of protest was served on any of them. No notice of contest was given. No testimony, in a legal sense, was heard. No witnesses were examined. Certain *ex parte* statements, it seems, were somehow made before, or put into the possession of, the Board. But there was no pretence of any legal examination into the cases. Indeed the two members of the Board who had characters to lose (the Secretary of State and the Attorney-General) voted against the action of the majority in the case of Laurens County; and the former filed his formal protest against the action of the Board in relation to both of the Counties, on the ground that they had decided upon an *ex parte* showing.

II. But it may be said that the Board heard no protest or contest, and yet that they saw enough to prevent them from issuing certificates to the members elect from Laurens and Edgefield. It is difficult to catch the distinction between this course of action and one adopted after hearing a protest. The election was either valid or invalid. If valid, the certificates were issued as a matter of course. How could it be declared invalid without the examination of testimony, and how could testimony be examined unless the issue was made as to the validity of the election, and how could the issue be made without a protest or a contest? If the Board of State Canvassers pass at all upon the validity of the election, they must do so in some judicial capacity. In this capacity they decide upon issues raised before them. How can these issues be made, except by parties interested in setting aside the result against parties interested in sustaining it?

It must be borne in mind that there is no pretence that Laurens and Edgefield failed to hold an election. The people met on the day fixed by the amendment of the Constitution; the Managers of election opened the polls; the ballot boxes were regularly prepared; the ballots were cast, and after the polls were closed the boxes were opened, the ballots taken out by the Managers, and the votes were counted, and the result certified. Under these circumstances, could the Board of State Canvassers declare that there was not a valid election?

Fortunately we are not left to any theory on this subject, and we are spared a long examination into the principles of law applicable to it.

In the case of Gilbert Pillsbury and others *vs.* The acting Board of Aldermen of the City of Charleston (1 South Carolina Reports, 30), the whole matter is discussed. This case was elaborately argued before the Supreme Court by Messrs. Chamberlain and Corbin, and the Court, recognizing the force of their logic, ruled with them. That case decides as follows: The 5th Section of the Act to provide for the election of the officers of the incorporated cities and towns of the State, &c., ratified September 25, 1868, providing that "the Managers of election shall decide contested cases, subject to the ultimate decision of the Board of Aldermen or Wardens when organized, except when the election of a majority of the persons voted for is contested or the Managers are charged with illegal conduct, in which case the returns together with the ballots, shall be examined and the case investigated by the acting Board of Aldermen, who shall declare the election, and their decision shall be binding on all parties, *does not authorize the acting Board of Aldermen in a case coming properly before it to adjudge the election to be illegal and void.* Its authority is limited to an examination of the returns together with the ballots, and a declaration of the results of the election."

III. The election having taken place, the Board of State Canvassers had no warrant in law for hearing any protest or contest, or for passing any opinion upon the validity of the election.

The powers of the Board of State Canvassers are derived entirely from the Statute: "The Board shall, upon the certified copies of the statements made by the Board of County Canvassers, proceed to make a statement *of the whole number of votes* given at such election for the various officers, and for each of them voted for, distinguishing the several Counties in which they were given. They shall certify such statements to be correct, and subscribe the same with their proper names. They shall make and subscribe on the proper statement a certificate of their determination, and shall deliver the same to the Secretary of State. Upon such statement they shall then proceed to determine and declare what persons have been, by *the greatest number of votes*, duly elected to such offices or either of them."

This is their general duty with regard to all offices—to make a statement of the whole number of votes given at such election for the various offices and each of them; to subscribe on such statement a certificate of their determination, and deliver the same to the Secretary of State. Upon such statement they shall proceed to determine and declare what persons have been, *by the greatest number of votes*, duly elected to such offices. Such is their duty on the count, and it is manifestly simply ministerial—to count the votes and declare who has received the highest number.

The Act then adds: "They shall have power, and it is made their duty, to decide all cases of protest or contest that may arise, *when the power to do so does not, by the Constitution, reside in some other body.*" In other words, no power whatsoever is given them to do anything but to make up, from the statements of the County Canvassers, a statement of the whole number of votes given at the election; and from such statement to determine and declare what persons have been, by the greatest number of votes, duly elected—except in certain cases of protest and contest, which do not, under the Constitution, reside in some other body. If an election takes place, and the managers count the votes, and the County Canvassers send up their statements to the Board of State Canvassers, this Board can, under any cirsumstances, do but two things: 1st. Make up a statement from

the statements of the County Canvassers, of the whole number of votes given at such election. 2d. And decide contests and protests in certain excepted cases.

The only inquiry left for us, therefore, is, whether the power to decide contests or protests in the case of an election for members of the House of Representatives, by the Constitution, resides in some other body than the Board of State Canvassers.

By an express provision of the Constitution, the House is the sole judge of "the election returns and qualifications" of its members. The Board of State Canvassers, in determining such a question, violated the Constitution; and in determining any question as to the validity of the election, not only violated the Constitution, but assumed a power not conferred upon it by the Acts of Assembly.

We have thus demonstrated that the action of the Board of State Canvassers, upon which alone rests the legality of the Mackey House, is illegal and void. But it is said that the Clerk of the late House, who by law and usage made up the roll of the House, could not admit any other names upon his roll than those of persons holding the certificates of the Board of State Canvassers.

There is no law in South Carolina conferring this power on the Clerk. The Committee rely on the eightieth rule of the House of Representatives of this State, which directs that "in all cases not determined by these rules, or by the laws, or by the Constitution of this State, * * * this House shall conform to the Parliamentary law which governs the House of Representatives of the United States Congress." But the Clerk of the United States House of Representatives does not make up the roll of the House by authority of any rule of that body, but in obedience to the positive requirements of an Act of Congress. The Committee, therefore, have no authority in law or in the rules of the House for their assumption. And we deny that it has been the usage in South Carolina for the Clerk to make up the roll. Such an usage certainly did not exist under the old Constitution. Nor has it existed under the last Constitution. The first session at which the Clerk assumed to organise the

House was in 1872, and he repeated it in 1874. At every previous session, the members elect met in the Hall of the House of Representatives, called some member elect to the chair, under whose direction the roll of election districts was called, whereupon the members produced their credentials, were sworn in by the Chairman, and, when this was done, voted for their Speaker.

In 1872 and 1874, the services of a Chairman were dispensed with, and the Clerk called the roll. But even in these cases, the members elect, when their names were called, produced their credentials at the desk. Why? That the Clerk should pass upon them? Surely not; for the House, as we have seen, is the sole judge of the qualifications of its members. But for the judgment of the House, should they be called into question.

But even admitting that some evidence of election was necessary, some credential for the appearance and qualification of the members elect, what better evidence could be furnished than that held by the members who were excluded? The Board of State Canvassers had, under their hands, certified a statement, made up from the certified statements of the County Canvassers, of the whole number of votes given at the late election for the various officers, and for each of them voted for, distinguishing the several Counties. They had determined and declared what persons had received the highest number of votes at the election for members of the House of Representatives; and had, in obedience to the order of the Supreme Court of the State, in a case pending therein, *in which they had submitted themselves to the jurisdiction of the Court*, certified who had received such highest number of votes; and their statement of the persons who had been elected, so certified to the Supreme Court, was thus a record in the highest Court of the State. Of this record every person in the State had notice, binding upon him. So the acting Clerk knew that there were one hundred and twenty-four members elect to the House of Representatives, and he could not, therefore, declare less than a majority of this number a quorum of the House.

But the question whether the organisation of the Mackey House was constitutional and legal, no longer depends upon ar-

gument. The question arose in the Supreme Court of the State in the case of The State *ex rel.* W. H. Wallace against H. E. Hayne, Secretary of State, and E. W. M. Mackey. This was an application for a mandamus to compel the delivery of the returns of the Managers of Election of the vote for Governor and Lieutenant Governor, to the Speaker of the House of Representatives, as required by the Constitution of the State.

In giving judgment in that case, Chief Justice Moses said:

"This is a Suggestion, filed by leave of the Court, in the name of the State at the relation of William H. Wallace, claiming to be the Speaker of the House of Representatives of the State of South Carolina, against H. E. Hayne, as Secretary of State, and E. W. M. Mackey. The Petition sets forth that a general election was held in said State on the 7th day of November, A. D. 1876, for the offices of Governor and Lieutenant-Governor of South Carolina; and upon such election the returns were duly transmitted to the said H. E. Hayne, as Secretary of State, in accordance with the provisions of the Constitution and laws of the State. This allegation is admitted by Respondents. The Petitioner alleges that the House of Representatives convened in the city of Columbia on the fourth Tuesday in November, and after convening, duly organized and elected him, William H. Wallace, Speaker, and notified the Senate; that the Petitioner as such Speaker thereupon demanded of the said H. E. Hayne, Secretary of State, the returns of the election for Governor and Lieutenant-Governor; that the Secretary of State refused to deliver said returns to the Petitioner, and still refuses; and has unlawfully delivered said returns to one E. W. M. Mackey, assuming to be Speaker of a body claiming to be the House of Representatives, which is not legally organized; and Petitioner prays that a Writ of Mandamus issue, directed to H. E. Hayne, as Secretary of State, and E. W. M. Mackey, commanding and enjoining them forthwith to deliver to the Petitioner, as Speaker of the House of Representatives, the returns of the Managers of Election, transmitted to him upon the election, and for further or other relief. On the suggestion, the Court granted an order

that H. E. Hayne, Secretary of State, and E. W. M. Mackey, show cause on the fourth of December instant, why the prayer and suggestion of the petition should not be granted. The pleadings, evidence, and arguments of the Counsel having been submitted to the Court, we now proceed to deliver our decision and judgment.

As to the jurisdiction of the Court, the exercise of which has been objected to on the part of the Respondents, the Court feel no doubt at all of its power under the Constitution. Section 4, of Article IV., provides that "the Supreme Court shall have appellate jurisdiction only in cases of Chancery, and shall constitute a Court for the correction of errors at law, under such regulations as the General Assembly may prescribe: *Provided*, the said Court shall always have power to issue Writs of Injunction, Mandamus, Quo Warranto, Habeas Corpus, and such other original and remedial writs as may be necessary to give it a general supervisory control over all other Courts in this State." Now according to the view of the learned Counsel for the Respondents, the power of the Court as to those Writs, under § 4, Article IV., of the Constitution, is limited to our supervision over all other Courts of this State.

The mere reading of the Section is enough, I trust, to convince the learned Counsel that his interpretation of the Section is not well founded. The Writ of Injunction is used, not to control other Courts, but acts directly on parties, and no form of Injunction could issue to a Court to enjoin the proceedings of one of inferior jurisdiction. The Writ of Mandamus stands upon a different footing. It may be addressed to another Court, may control the exercise of an assumed power by another Court, and in that view may be said to supervise. But Quo Warranto is never used in the supervision of another Court. It is directly an issue between two persons claiming the same office; so too the Writ of Habeas Corpus mentioned in the Section; how can that Writ issue to supervise Courts of inferior jurisdiction? It is the great writ of privilege interposing the shield of the law over the person of the prisoner. This great writ of right and of liberty acts only upon the person, and never upon a Court. To show

that the view which we entertain of the said Section is in consistency with the end designed by the framers of the Constitution, we may refer to the fact that the exercise of this power was to continue as it existed at common law at the time of the adoption of that instrument. They went further, and gave to this Court power to issue "such other original and remedial Writs as may be necessary to give it general supervisory control,"—for instance, the writ of *certiorari*, and every other writ which was requisite to bring into this Court the proceedings of an inferior tribunal, that its action might be supervised by this Court. So much for the objection in that particular.

"It is then alleged that this Court has no jurisdiction over Hayne, one of the Executive officers of the State, because, according to the limitations of the Constitution, the powers of the government are vested in three distinct bodies; neither one of which can exercise any control over the other.

"That may be conceded to the fullest extent, and yet what would become of the rights of the citizen, vested in him not only by the common law but by Statute, if there was no control over the Executive department of the government? The Treasurer is a part of the Executive department, and yet more than one case may be found where this Court has interposed to compel him to perform duties specifically required of him; and so of other officers. It is not an encroachment upon the duties of their particular departments. This Court does not undertake to say to them, that we are to perform the duties assigned by law to you. It does no more than say, you must perform the specific duties assigned to you by law, where you have not the privilege of exercising discretion. That is all; the Mandamus could not compel the Governor to issue a pardon; that would be an encroachment on his prerogative. But to say that the Judicial department of the government, where a citizen avers that his rights have been infringed by an Executive officer, could not interpose, as for example, when the Legislature had appropriated a certain sum of money to be paid to him, and the Treasurer refuses, is startling. Where would the Judiciary be? where would the other departments of the government be? The Ju-

diciary would sink into mere insignificance. The other departments might increase and wield their powers to such extent that the liberties of the people might be entirely destroyed. The Court has previously decided this point in the same way. It was only out of respect to the learned Counsel from abroad that it permitted it to be again argued.

"The question is, whether Mr. Wallace has established in this Court his right, by reasons of his holding under the Constitution the office of Speaker of the House of Representatives, to the possession of the returns of the election for Governor and Lieutenant Governor, filed with the Secretary of State.

"We do not feel it incumbent upon us either to inquire or determine if Mr. Mackey, one of the Respondents in this case, is the Speaker of a legally constituted House of Representatives of the State of South Carolina. We do not consider that inquiry necessary to the judgment demanded in this case. The Court holds that Mr. Wallace is the Speaker of a legally constituted House of Representatives of South Carolina, therefore has such a status here as authorises the proceeding on his behalf. It has been made to appear by evidence that of the constitutional number, one hundred and twenty-four, of which the House shall consist, sixty-three members were in their seats when Mr. Wallace was elected. The constitutional requisition having been thus complied with, there was present the necessary "quorum to do business." This is no new question—it was so decided by this Court in a day when everything was calm and serene, when the political atmosphere was pure, when there was no excitement in the country, as unfortunately prevails now. In the case of Morton, Bliss & Co. against the Comptroller General, reported in 4th South Carolina Reports, it was held that to constitute a House of Representatives, there must be a majority of the members which the Constitution requires to make a House, and that is one hundred and twenty-four, in the proportion of members to the respective Counties, as fixed by law.

"Now it is contended that there was not sufficient evidence of the right to membership on the part of the gentlemen constituting the number of sixty-three to entitle them to the floor in the or-

ganization of the House. As we understand it from the proof in the case, and it is conceded by the Respondents, that all the members had certificates from the Secretary of State except eight, and the eligibility of those eight was established by the proceedings in this Court.

"No matter what was the character of the certificates they had, the return of the Board of State Canvassers to this Court, showing that they had received the greatest number of votes in their particular counties, entitled them to access to the floor for the purpose of organization. The return made to this Court by the Board of State Canvassers shows the name of every candidate in every County, and the number of votes he received, and therefore the names of those who received the greatest number in their respective Counties. The Court then required that the Board of State Canvassers should make a report in conformity to that return. Instead of performing that duty, they adjourned *sine die;* possibly with the view in that way of avoiding the performance of the duty plainly imposed upon them by the law, but more especially brought to their notice by the order of the highest Court of the State of South Carolina.

"The law cannot be avoided in that way. We must at least preserve our civilization and maintain the due enforcement of the laws, according to the judgment to those upon whom the Constitution has imposed the duty and responsibility of interpreting them.

"In every case there will be difference of opinion, but we think that when the political horizon is clearer than unfortunately it now is, the whole people of South Carolina will unite in saying that the law must be obeyed. Peace and prosperity can never be the reward of the people until every man knows that his first duty is not only to submit to the laws, but to lend his moral influence to their proper enforcement.

"So much of the prayer of the Petition as asks for a mandamus against Mr. Mackey must necessarily be dismissed.

"There cannot be two Speakers of the House of Representatives in South Carolina, and Mr. Mackey stands in the position. so far as appears by the testimony and in the view of the Court, as a private citizen, against whom mandamus cannot issue. In regard

to Hayne, the Court considers that another important question is involved, and will order a further hearing at some future day.

"It is therefore ordered and adjudged that the said W. H. Wallace is the legal Speaker of the legally constituted House of Representatives of the State of South Carolina, and as such officer was and is entitled to the possession of the returns of the election for Governor and Lieutenant Governor, held on the 7th day of November, A. D. 1876, which were transmitted to H. E. Hayne, Secretary of State. But it appearing that the said election returns have been unlawfully delivered by said H. E. Hayne, Secretary of State, to E. W. M. Mackey, one of the Respondents, the question is reserved for further argument and consideration, whether the writ of mandamus should now issue to said H. E. Hayne, Secretary of State.

"It is further ordered and adjudged that the petition be dismissed as to E. W. M. Mackey."

Associate Justice Willard said:

"As this is the case of very great magnitude, it would be proper to enunciate briefly the propositions upon which I concur with the action of the Court. The Supreme Court has constitutional jurisdiction in cases of mandamus. Our jurisdiction is original and general; we have so construed the Constitution repeatedly without objection to that jurisdiction having been raised before at this bar, although we repeatedly affirmed that to be under our jurisdiction. Mandamus issues whenever a public officer is called upon to perform a ministerial act of a specific character, and, on demand, has refused its performance. The question then arises whether the Secretary of State and E. W. M. Mackey occupy that position. Are the duties they are called upon to perform ministerial? Are they specific? Have they been called upon to perform them? and have they refused performance? And the additional question, whether Mackey is a public officer. There can be no question as to the character of the duty of the Secretary of State. He is ordered to do a specific thing: to deliver certain papers to a certain person invested with the office of Speaker of the House of Representatives.

"That is clearly a ministerial act. We have rightfully defined a ministerial act to be one proceeding from a duty to do something which an individual or corporation has a right to demand should be done. The Speaker of the House of Representatives has a clear right to demand that the Secretary of State should transmit to him the papers in question. The Secretary of State being a public officer, charged with this specific ministerial duty, is bound to perform it. And refusing it, he may be compelled by mandamus. The question which is raised is, Is Wallace Speaker of the House of Representatives? It seems that the body over which he presides had the Constitutional majority, provided the members from Edgefield and Laurens Counties were entitled to seats in that body. This is indisputable. I am satisfied that the provision of the Constitution that the House of Representatives shall consist of (124) one hundred and twenty-four members, is mandatory, and the House cannot obtain a Constitutional organization without having a majority of that specific number of members participating in the organization. The question as to whether the members from Edgefield and Laurens Counties were entitled to seats, was rightly understood by counsel as depending upon the jurisdiction of this Court in mandamus. If this Court had power to command the Board of State Canvassers to declare the election of those members from Edgefield and Laurens Counties, then we think they are to be regarded as members of the House of Representatives. We permitted counsel to argue the question of our jurisdiction, not because we had any doubt or could conceive of a possible doubt, but because this is a case of great importance, and the Court wished to hear everything that could be said upon the subject. We have no doubt as to our jurisdiction to confine the Board of State Canvassers within the limits of their proper jurisdiction; to say what the jurisdiction of that body is. We do not claim, nor have we ever exercised, nor do we intend to exercise, the right to control the discretion of any Executive officer or Board whatever, nor to interfere with their discretion. We determined that they had a mere ministerial duty to perform as regards members of the Legislature. The provision of the Constitution

making each House the judges of the election returns and qualications of its own members, could leave nothing for the Board to do but the ministerial duty of certifying the results of the election as they appeared *prima facie*; and the Act of the Legislature itself has paid respect to the Constitution, by withholding in terms from the Board of State Canvassers such power when it is lodged in any other body. In the case under consideration, it had been already lodged by the Constitution in the several houses of the General Assembly. The Court commanded that specific ministerial act to be performed. After the judgment was rendered from the Bench, and before the writ of mandamus was issued, it appears from the proceedings in that case, which are before us, that the Board undertook to make certain declarations in violation of their duty, under the judgment of this Court. Under familiar principles, that action was null and void, and could give no legal foundation to any legal action whatever. The members of the Legislature were then in the same position as if the Board had refused to make any declaration whatever after having been commanded by this Court; and I presume that there is no lawyer who will give fair consideration to this matter, who will doubt, that if after judgment pronounced the Board had refused to make any declaration whatever, it would have been competent for the members elected, under the statement of the Board made to this Court, to take their seats without any certificate whatever, inasmuch as their action was abortive when they disobeyed the order of the Court. Technical constructions are never to be applied in the vital stages of the organization of such a body. Red tape can never be allowed to tie up the organic powers of the Government. It would be to attempt to carry matters of form proper to the minor transactions of life, into those great matters which cannot be hampered by such things. I am fully in accord with the Court that the body which contains the constitutional number, was the House over which Wallace presides. The one presided over by Mackey has no legal status whatever. Mackey is a private citizen, and is subject to arrest and punishment. The criminal Courts of the country furnish the means of punishment.

"As to the Secretary of State, I fully concur in the view that the question whether mandamus can go to him after he has parted with the papers, should be fully argued at the Bar."

Associate Justice Wright said:

"I fully concur with my associates in all that they have said. I have just remarked to the Chief Justice that it was not necessary for me to say a word, inasmuch as he and my other associate have better expressed my views than I am competent to do. The whole point in this case is whether or not five persons from Edgefield and three from Laurens had a *prima facie* right to take their seats and participate in the organization of the General Assembly of South Carolina. In looking a moment also at the statutes under which the State Board of Canvassers are directed to act, I find the (24) twenty-fourth section, which is one of the sections which defines their power and duties, reads thus: "The Board, when thus formed, shall, upon the certified copies of the statements made by the Board of County Canvassers, proceed to make a statement of the whole number of votes given at such election, for the various offices, and for each of them voted for, distinguishing the several Counties in which they were given. They shall certify such statement to be correct, and endorse the same with their proper names." That was an indispensable duty devolved upon the Board of State Canvassers. It is evident that they did not perform that duty, inasmuch as they assumed to throw out two Counties in the State, and to leave the people in those Counties unrepresented in the organization of the House of Representatives. Now was there, or is there, any remedy or redress for the citizens of Edgefield and Laurens Counties? This statutes provide that the Board of County Canvassers shall file certified copies of their statements in the office of the Clerk of the Court for each County; also with the Governor, Comptroller-General and Secretary of State.

"I regard that as a wise provision of the law, for the simple reason, if it can be called simple, that if the Board of State Canvassers could throw out a County or Counties, and declare that those

Counties shall have no representation, that there is a way by which you can tell who received the highest number of votes. Now, I presume the object of the Government is, or should be, the protection and representation of the people. If a body of men acting as a Board of State Canvassers have a right to throw out one County and thus defeat its representation, they can throw out one half or all of the Counties in the State, and defeat an entire election. Consequently I take it that those eight men had a right to participate in the organization of the House of Representatives. That being the fact, it was impossible for the other so-called House to have the requisite Constitutional majority.

"So far as regards the other case, that of Secretary of State, I fully concur with my associate that it is a very important and grave question, and should be fully argued by counsel. It has not yet been argued at all."

This judgment of the Supreme Court is conclusive. It is binding upon every citizen of South Carolina. It is the law, and governs every Court in the State. There can be no argument whether the Mackey House was legally constituted, because the Supreme Court has decided that it has no legal *status* whatever. In any point of view, the organization of the Mackey House was illegal, and every act, deed, matter, or thing attempted to be done and performed by it was, and is, utterly void.

Without comment it is too clearly seen that this decision is not *obiter dictum*, because the decision necessarily involved the questions which was the House of Representatives and who was Speaker, as was conceded in the argument by Counsel on both sides. See Marbury *vs.* Madison, 1 Cranch.

The decision in the Mandamus as to rights of members of the Legislature who had received the greatest number of votes, was the basis and pith of this decision.

The Chamberlain Memorialists, on p. 5, review the decision of the Supreme Court, and charge—

1. That it counts in the eight members from Edgefield and Laurens, whom the Board had refused to certify.

The Court no where undertook to "*count in*" any members. It simply held that the Board could not "*count out*" those two Counties of the State. The certificate of the Board of Canvassers to the votes cast is the finding of fact, upon which the decision of the Court as to the rights of the parties and the law of the case stands.

2. It is charged that the Court, "having been unable to compel the Board of State Canvassers to decide the election according to its own view of their duty and not their view, decides that its own declaration of the election in Edgefield and Laurens Counties shall stand, instead of the decision and declaration of the Board."

If the conflict were between the view of the Supreme Court of a State and the view of a State Board as to the legal duty of the latter, we ask, in all conscience, which of the two should prevail? It is not true that "the Court decided that its own declaration of the election should stand instead of the decision and declaration of the Board."

On the contrary, the Court decided "that its judgment, based upon the certificate of the Board of Canvassers as to the actual result of the election. as shown by the County returns, should stand instead of the false statement and illegally certified determination of the Board of Canvassers, and be taken by the State officials as sufficient evidence of the rights, *prima facie,* of the persons elected;" and that Wallace was the lawful Speaker of the lawful House, and its decision is final. Luther *vs.* Borden, 7 Howard, p. 40.

VIII.

As to the proceedings in Habeas Corpus before Judge Bond, the preceding extracts from the Record show that the members of the refractory Board of State Canvassers were in custody for contempt in failing to obey the mandate of the highest Court of the State, expressed in its writ of peremptory mandamus, and failing and refusing to make return to said writ, and failing to make return to the Rule served on them, or to show any reason

why they had not executed the mandate of the Court in a matter exclusively cognizable by the Judiciary of the State, and with which the Federal authorities had nothing whatever to do in the way of jurisdiction or otherwise. Nor can any color or support for Judge Bond's action in taking jurisdiction of the case, much less in discharging the prisoners from custody, be found in the fact relied on in his opinion, that Sims and the other petitioners applied in the original petition for a mandamus against the Board of State Canvassers in the matter of the election for Electors of President and Vice President, not only because the action of the Court complained of had no reference whatever to the duties of the Board in that regard, but because the following order had been passed prior to granting the order for the issuing of the writ of mandamus:

"THE STATE OF SOUTH CAROLINA,
IN THE SUPREME COURT.

The State *Ex rel.* R. M. Sims *et al.*,
vs.
"H. E. Hayne *et al.*, Board of State Canvassers, and H. E. Hayne, Secretary of State.

MANDAMUS.

"It appearing, from an inspection of the above stated petition for Mandamus, that the same relates to different classes of officers, to wit, of Members of the General Assembly, of Electors for President and Vice President of the United States, of Members of Congress of the United States, of Circuit Solicitors, of County officers—and it appearing to the satisfaction of the Court that there are, or may be shown to be, different provisions or rules of law applicable to these several classes of officers, and that the emergency of time may render necessary and proper a priority in the order in which the Court shall pass upon the questions of law relating and applicable to these different classes of officers respectively—

"*Ordered*, That the petition herein be considered and deter-

mined by the Court, as if several separate petitions had been filed herein, one each in the several above specified different classes of officers.

"November 21st. 1876. (Signed) F. J. MOSES."

The Order for the writ of Mandamus, the writ of Mandamus, the Rule on the State Canvassers, and the Order adjudging them in contempt, all have reference to their duties in regard to the election of Members of the State Legislature *only*. The contempt of Court committed by these high officials was of the grossest nature.

To any one at all acquainted with the partition of Federal and State powers, or the boundary lines of jurisdiction between Courts, or the common learning upon the subject of contempts, it would seem almost insulting to argue for the purpose of demonstrating that a Judge of the United States Courts had no jurisdiction to revise by habeas corpus this judgment of contempt made by the Supreme Court of the State, and could not discharge those committed under the State laws for such contempt.

The jurisdiction of the United States Courts in such cases is negatived by an unbroken current of controlling authorities, a few of the more prominent of which are: *Ex parte* Kearney, 7 Wheaton, 38; Tarble's case, 13 Wallace, 407; Ableman *vs.* Booth, 21 Howard, 523; *ex parte* Watkins, 3 Peters, 201; Hurd on *Habeas Corpus*, 412. Nor is Judge Bond more happy in his idea that this controversy may be referred to the Supreme Court of the United States, for no such appeal lies. Rev. St. U. S., page 143.

IX.

Election and Inauguration of Governor and Lieutenant Governor.

The election returns show that at the election for Governor, Wade Hampton received 92,261 votes, and D. H. Chamberlain, his only competitor, received 91,127 votes, making a majority for Hampton of 1,134 votes; and that at the election for Lieu-

tenant Governor, W. D. Simpson received 91,689 votes, and R. H. Gleaves, his only competitor, received 91,550 votes, making a majority of 139 votes for Simpson; and the Constitution of South Carolina is express that "The person having the highest number of votes shall be Governor."

Section 4, Article III., of the Constitution of the State is as follows:

"SECTION 4. The returns of every election of Governor shall be sealed up by the Managers of elections in their respective counties, and transmitted, by mail, to the seat of government, directed to the Secretary of State, who shall deliver them to the Speaker of the House of Representatives at the next ensuing session of the General Assembly, and a duplicate of said returns shall be filed with the Clerks of the Courts of said Counties, whose duty it shall be to forward to the Secretary of State a certified copy thereof, upon being notified that the returns previously forwarded by mail have not been received at his office. It shall be the duty of the Secretary of State, after the expiration of seven days from the day upon which the votes have been counted, if the returns thereof from any County have not been received, to notify the Clerk of the Court of said County, and order a copy of the returns filed in his office to be forwarded forthwith. The Secretary of State shall deliver the returns to the Speaker of the House of Representatives at the next ensuing session of the General Assembly; and during the first week of the session, or as soon as the General Assembly shall have organized by the election of the presiding officers of the two Houses, the Speaker shall open and publish them in the presence of both Houses. The person having the highest number of votes shall be Governor; but if two or more shall be equal, and highest in votes, the General Assembly shall, during the same session, in the House of Representatives choose one of them Governor *viva voce*. Contested elections for Governor shall be determined by the General Assembly in such manner as shall be prescribed by law."

After the election had been duly held the returns were duly certified and delivered to the said Hayne, then Secretary of

State, who, without warrant of law, delivered them to the said Mackey, illegally claiming to be Speaker of the House of Representatives, neither he being Speaker, nor the body electing him, the minority of 59 all told at the time of its pretended organization, being the House of Representatives, as has been adjudged by the Supreme Court in the decision and opinions of all three of the Justices hereinbefore set forth. Afterwards, on the 5th of December, 1876, the said Mackey, in presence of this illegal, unauthorized, and unorganized assemblage, falsely claiming to be the House of Representatives, and a portion of the Senators, in the hall of the House of Representatives, the doors thereof being closed and guarded by officers and soldiers of the United States army, pretended to open and publish the returns of the election for Governor and Lieutenant Governor, but in reality only opened and published a portion thereof, and did not open and publish the returns from the Counties of Edgefield and Laurens, in which Counties Hampton received a majority of 4,272 votes over Chamberlain for Governor, and Simpson received a majority of 4,235 votes over Gleaves for Lieutenant Governor; and thereupon illegally declared Chamberlain and Gleaves to have received the greatest number of votes, and to be elected Governor and Lieutenant Governor; and thereafter, on the same day, Chamberlain and Gleaves, under the same military guard, went through the pretended ceremony of taking oaths of office; and thereupon pretend to be Governor and Lieutenant Governor of the State.

On the fourteenth of December, 1876, William H. Wallace, the lawful Speaker of the lawful House of Representatives, after the House had given the usual and customary notice and invitation to the Senate, in default of possession of the returns of the election of Governor and Lieutenant Governor, which were illegally detained by Hayne and Mackey, opened and published, in the presence of said House and of a number of Senators who attended upon said notice and invitation, the duplicates of the returns which had been filed with the Clerks of the several Counties, *and a certificate by said Secretary of State*, Hayne, of the number of votes cast for Governor; and Hampton and Simpson having received the highest numbers of votes, were duly

declared duly elected Governor and Lieutenant Governor of the State, and thereupon on that day took and subscribed the oaths of office prescribed by the Constitution, and then and there entered upon the discharge of the duties of their offices. Nor have either Chamberlain or Gleaves taken any steps to contest said election as provided for in the Constitution and by Act of Assembly, Revised Statutes, page 32, section 28.

The bogus House of Representatives and Senate affected to pass a Tax Act, and Chamberlain affected to approve it as Governor; but his pretended officials for collection of taxes, can make no collections.

The people of the State, without regard to political or race complexion, conscious that Hampton has been elected and is Governor, have voluntarily contributed over one hundred and twenty thousand dollars, without the imposition of any tax, for the purpose of supporting the penal and charitable institutions of the State,—the Penitentiary, Lunatic and Colored Orphan Asylums, —which the previous administration of Chamberlain had suffered to be in absolute want, and for furnishing the funds necessary for the administration of the law.

As long ago as October 4, 1876, Mr. Chamberlain, in a widely circulated document, over his own signature, in which he confessed his utter inability to administer the government of the State, and that his reliance was on military aid, threatened "action which would inflict great temporary injury upon the material interests of the State;" and right faithfully has he acted as he threatened, shielded and supported in the ruin he has wrought by the army of the United States. The material interests of the State have been greatly injured, commerce languishes, trade scarcely exists, capital is repelled, industry is paralyzed. The corridors of the Capitol still resound with the measured tread of the sentinel, and bristling bayonets proclaim to the favored few who are permitted without molestation to enter its portals, in language not to be misunderstood, *inter arma silent leges.* In defiance of the Constitution and of the will of the people lawfully expressed at the ballot box, the Governor, Lieutenant Governor, and House of Representatives

are still excluded from the State House by armed troops of the Federal Government. Mr. Chamberlain and his pretended government are supported and upheld by them and by them alone.

For the reasons set forth, your Memorialists regard it a public duty again to apply to the Legislative Department of the Government for relief from the interference of the United States military authorities in the affairs of this State.

WADE HAMPTON, *Governor.*
WM. D. SIMPSON, *Lieutenant Governor.*
WM. H. WALLACE,
Speaker House of Representatives.
JAMES CONNER, *elected Attorney General.*
JOHNSON HAGOOD,
elected Comptroller General.
R. M. SIMS, *elected Secretary of State.*
S. L. LEAPHART, *elected Treasurer.*
H. S. THOMPSON.
elected Superintendent of Education.
E. W. MOISE,
elected Adjutant and Inspector General.

ERRATA.

Page 32, Line 28, for "Fuller *vs.* Hilliard," read "People *vs.* Hilliard, 29 Ill., 419.

Page 33, Line 26, for "Court" read "count."